

The Salisbury Planning Board held its regular meeting on Tuesday, April 13, 2004, in the City Council Chamber of the Salisbury City Hall at 4:00 p.m. with the following being present and absent:

PRESENT: Len Clark, Dr. James Johnson, Lou Manning, Brian Miller, Rodney Queen, Sandy Reitz, Jeff Smith, Valerie Stewart, Albert Stout, Jerry Wilkes

ABSENT: Mitzi Clement, (Final member not yet appointed)

STAFF: Janet Gapen, Dan Mikkelson, Joe Morris, Harold Poole, David Phillips, Diana Moghrabi

The meeting was called to order by **Co-Chairman Rodney Queen**, who opened with prayer.

New Planning Board members Dr. James Johnson, Valerie Stewart, and Albert Stout, Jr. were welcomed and the entire Planning Board was introduced.

The minutes of March 23, 2004 were approved as published.

ZONING MAP AMENDMENTS

Z-6-04 Gray Stout, AIA, S. Lee Street - E. Fisher Street Intersection

LOCATION: 121 & 119 S. Lee Street, 210 E. Fisher Street
Size: 0.46 acres – total of all three (3) parcels
From: B-6 General Business
To: B-5 Central Business

- (a) Co-Chairman Queen convened a courtesy hearing on **Z-06-04**. **Jeff Smith** clarified that he has no conflict of interest relating to this zoning case. **Janet Gapen**, gave the presentation and explained that the area lies in the local historic district, and any site improvements would require a certificate of appropriateness from the Historic Preservation Commission. This site is also located in the “parking exempt” overlay. The three parcels are now vacant, except for some surface parking. The principal difference between B-5 and B-6 buildings is that in the B-5 zoning buildings can be built close to the road right-of-way and in B-6 the building front setback is required to be 35 feet from the right-of-way.

Those speaking in favor of the zoning change request:

Gray Stout, 5 Acorn Lane, has a financial interest in the project as the architect and co-developer. They want to be able to build a proposed in-fill structure up to the street edge.

Those speaking in opposition to the zoning change request: None.

The chairman closed the courtesy hearing on this case.

(b) Board Discussion:

Brian Miller approves of the flexibility the rezoning offers the property owner. Sandy Reitz thought that the preview of the project that was in the Salisbury Post was excellent. Rodney Queen agrees that this rezoning is an appropriate investment toward positive growth.

Brian Miller made the motion to approve the rezoning as requested; **Lou Manning** seconded the motion with all members voting AYE.

SPECIAL USE PERMIT

SUP-1-04 Sonji S. Clegg – child daycare home at 1177 Landsdown Dr.

(a) Co-Chairman Queen convened a courtesy hearing on **SUP-1-04.**

Jay Dees, 121 E. Kerr St, met with the property owner to prepare for today's representation and now finds that he has a substantial conflict in this matter with a builder and residents in this neighborhood. Mr. Dees feels that it is appropriate that he withdraw from representing her. He requested that the Board consider continuing this Special Use Permit Hearing at a later date. He offered to reimburse the City for any additional costs that may be incurred so Mrs. Clegg would have appropriate time to hire counsel. Rodney Queen asked Mrs. Clegg if she would like to have a continuance, and she said yes. Mr. Queen then asked how many people had appeared to hear this case and found the neighborhood well-represented. Since the case has been advertised, signs have been on the property, and notices were mailed the hearing would continue. Mr. Queen suggested that Mrs. Clegg could still prepare representation before going to City Council.

David Phillips made a staff presentation for this property located in the city's ETJ, in the Wendover Heights subdivision. It is zoned R-15 Single Family Residence, and one of the conditions of the rezoning is that it has to be the residence of the operator, which it is. He read the definition and the state qualifications to have home child care. Part of the criterion for the issuance of a special use permit is the general acceptance in the neighborhood in which the child daycare home is located.

Those speaking in favor of the zoning change request:

Sonji Clegg, 1177 Landsdown Dr., presented signatures of the neighbors who were in favor of her child day care. She has been operating World of Joy Child Care for about two years in her current residence and is planning to move to 1177 Landsdown Dr. She is presently taking the steps necessary to relocate her child day care.

Dorothy Partlow, 109 Bayview, does not have a problem with the child day care moving to the subdivision. Her son is two years old and has attended Mrs. Clegg's day care since he was six weeks old.

Claude Clegg, 1177 Landsdown Dr., (Sonji Clegg's husband) cannot imagine how anyone could be against the care of children. He hasn't heard any complaints, but "the noise is really in the air." He hopes that Sonji has the opportunity to open her day care and that the neighbors have an opportunity to learn how smoothly the day care is operated. He prays that all will give this case their honest consideration.

Those speaking in opposition to the zoning change request:

Mike Zimmerman, 223 Wendover Dr., feels that there are a lot of people who have major concerns with the operation of a child day care in this development. He presented a petition with 19 signatures against this case. The list of names includes the developer, who still owns a vast amount of the property in the development. He asked everyone in opposition to stand and there was a very good representation in the room (about 13). Concerns include traffic issues, increased trash, and loss of property values. He stated that the neighborhood welcomes Mrs. Clegg and her family, but not her business. He is concerned about the allowable five full time/three part time children; in addition to her own three children that would be 11 children. Out of the 23 houses under construction, hers is the only one that does not have any type of overhang over the front door, or a sidewalk going to the front steps. He thinks this could be due to necessary cutbacks and would this be a sign of cutbacks she would make on the child care she would provide. He has investigated the nuisance abatement ordinance and discovered that by being located in the ETJ there would be no one to enforce any nuisance problems. Her petition reflects signatures that he also has on his petition and he supplied a copy of his list.

Sheila Flowers, 1140 Landsdown Dr., lives nearby and states that there is no hostility toward the Clegg family. For Ms. Flowers it is a matter of personal investment and interest. When she purchased this home she felt she was buying in a residential area. She has no children and works in a prison, and appreciates the need for good child care and day care. If given the choice, she would not purchase a home near a day care and feels it will devalue her property. She cited more traffic and more crime with more people in the area. The house is on a dead end and she is concerned about people turning around in her driveway. Eleven children and one adult ratio is not a good one.

Patricia Boyd, 1162 Landsdown Dr., lives in front of the Clegg's home. Ms. Boyd (a retired school teacher) lives alone, and looks forward to living her retirement in a quiet area. She does not know the Clegg family and wishes them no ill will, but did not plan to live in front of a day care. She spoke to an appraiser who told her that moving a day care into the area will decrease property values.

James Rowland, Rowland Development Corporation, 6240 S. Main St., built at least one half of the homes in the neighborhood. He entered into a contract with Mr. Andrew Davis for property located two lots away from Mrs. Clegg's property prior to knowing she would request this special use permit. Mr. Davis sometimes works third shift and is concerned about the noise and sleeping during the day. Mr. Rowland is carrying construction loans and cannot afford Mr. Davis to change his mind over this issue. He

does not have a problem with a day care in a business area, but has concerns about the impact this will have on him economically.

Dave Rowland, 1050 Shawnee Trail, China Grove, is the developer who feels the individual homeowners bought their properties because of the country setting; it is a nice, restricted subdivision; it is close to the conveniences of town. He feels it will have a negative economic impact on him and the homeowners. There will be a total of 90 single family residences in the development when it is complete. If the Clegg family had explained that they were planning to run a business out of their home he would not have sold them the lot. These homes represent the largest personal asset and the most important purchase of a lifetime of the people in this neighborhood. "You might as well take \$10-15,000 out of their pockets, because that is about what they will be losing in property values."

Andrew Davis, 1040 Short St., originally chose a lot next to the Clegg property but moved after seeing children at the Clegg property. He did not want to be right next to a home with children. He feels that this could introduce the idea of other businesses in the neighborhood. The decrease in property value is a concern to him.

Gary Hill, 1366 Landsdown Dr., was approached by Mrs. Clegg a few weeks ago to sign her petition. At the time he was neutral and required more information, which he requested from her and did not receive. The owners researched their property and felt they understood the restrictions, but feels Mrs. Clegg did not do her research. He works third shift and wants a quiet neighborhood.

Sonji Clegg was offered an opportunity for rebuttal. She addressed Gary Hill's comment about the information he had requested. She had instructed neighbors that she could be found on the Internet. She clarified that she is not a "center" and there would not be signs in front of her home. Her children are not included in the State's count of children in her care; her children would have more friends over than the number that will be in her daycare. In regard to taking cutbacks on her home, she wants to move in and finish the home "out of pocket." She did not think others could tell her how to dress up her home. She will have a fence and the children will not be outside but thirty minutes a day. She keeps infants and toddlers so they will not be making that much noise. The parents will not be driving in people's yards and driveways. Parents will be coming directly to her home. Her clients work for Child Protective Services, DSS, Freightliner, and the school system. They are not bad people. She is not bringing the community down and she did research this before she had her home built there. She asked the Board to, "Please take into consideration that this is her way of making a living and the lifestyle of their family."

The chairman closed the courtesy hearing on this case.

(b) Board Discussion:

Len Clark felt that you could ignore litter, number of children, property values, noise and the traffic. If the majority of the neighborhood cannot give general acceptance then the Planning Board should vote it down. **Sandy Reitz** agreed with this statement.

Lou Manning stated that it was fairly clear that there is not support in the neighborhood for the child day care, and that is a required part of getting the Special Use Permit. He feels that they would have to vote it down. **Jerry Wilkes** asked if there were any other child care homes in this development. ANSWER: No.

Jeff Smith understands the concerns of the neighborhood and has a problem with the language of “general acceptance.” He feels that it is bad language and as progress is made in the Land Development Ordinance that the language should be addressed. He feels that other issues should be quantified. Residents have offered good reasons to deny. Mr. Smith does not feel this is personal, but it could be in some cases. If the motion comes to deny it, he will vote against it because the ordinance needs to be changed. The neighborhood needs to deal with this issue in covenants and restrictions; it ought to be allowed by right. These thoughts stem from a case from about two years ago. The Planning Board has passed all of them up until now. His vote against denying this is not specific to this issue, but feels strongly about addressing this differently. Child care facilities are needed. He sees this type of business often and in a variety of economic areas. They have very little impact on the neighborhood and no impact on the price of the houses. He sells homes in the neighborhood Mrs. Clegg currently resides in.

Brian Miller does not think it is as intrusive as it has been presented, but also thinks that the way the ordinance is now (the way it is written) it does say “general acceptance.” In this case, “general acceptance” is not present and this is the way Planning Board has to measure it. If the developer has not addressed this in a covenants issue, it might be wise to do so.

Rodney Queen is strongly supportive of day care. He feels that a good place for day care is in the neighborhoods. The concerns of the people are valid and there is an unknown. More work probably needs to be done in achieving the acceptance from the neighborhood. He agrees with Mr. Smith that the wording needs to be changed.

Mr. Queen called for a motion. **Brian Miller** moved that the request be denied. **Len Clark** seconded the motion. The motion was passed by a 9-1 vote; Jeff Smith voting NAY.

Mr. Harold Poole explained to Mrs. Clegg what her options were and that she had until Friday, April 23, 2004 to submit a letter requesting to be heard by City Council if she so chooses; a hearing would be set sometime in May. He also explained to the neighborhood what they could expect to happen next.

GROUP DEVELOPMENT SITE PLAN

(a) **G-02-04 United Beverages of NC- 385 Airport Rd.**

David Phillips made the staff presentation that described the site. He pointed out some changes in the driveways to accommodate the plan. Staff is supporting a variance for a driveway. Due to

the proximity to the airport the County reviewed the plans, as did the Technical Review Committee (TRC). The County will require that when the building is completed, they will have to certify the overall elevation as a matter of record. Staff is recommending approval as submitted.

The Board asked questions about the future of the runway as it related to the property.

Those speaking in favor of the site plan: None

Those speaking in opposition to the site plan: None

Board Discussion

Brian Miller said that with the TRC extending their support with these conditions he sees no reason why the Planning Board should not approve this plan as submitted. He then made the motion to approve as submitted. **Jerry Wilkes** seconded the motion with all members voting AYE.

(b) **G-03-04 Carolina Building Solutions @ Oakwood Business Park – 220 Ryan Patrick Dr.**

David Phillips made the staff presentation and described the area and the plan. Staff has reviewed the plan; it has gone to the TRC and it is being recommended to approve as submitted.

Those speaking in favor of the site plan: None

Those speaking in opposition to the site plan: None

Board Discussion

Brian Miller made a motion to approve as submitted. **Sandy Reitz** seconded the motion with all members voting AYE.

COMMITTEE REPORTS

- (a) Ethics Committee (S. Reitz, ch) There had been many discussions about how conflicts of interest were handled with our Planning Board. She appreciated Brian Miller clearing this up and realized that the Board was acting in accordance with the principles. Members are making full disclosure when appropriate. There were additions to (F), (G), & (H) and copies of the changes were submitted in their report. This will strengthen the meaning of the word “advocate.” These principles are based on those provided by the American Planning Association.

Brian Miller suggested speaking to the City Planner, Harold Poole or the City Attorney for advice if there is a question or need for clarification concerning a possible conflict. He feels that in the event of a conflict, a script could be provided (like the one used to explain the Courtesy Hearing). An example could be, “This person has declared a direct

financial interest and for that reason he/she will not participate as a member of this Board at this time.”

Rodney Queen used today’s example of Jeff Smith’s disclosure of *not* having a financial interest; he does have an obligation to stay on the Board, offer his input, and vote.

Len Clark is interested in a script that could be read, which would explain when Board members do have conflicts or the absence of one.

Harold Poole informed the Board that it is in the Rules of Procedure to wait until the next meeting before voting to accept the changes in Ethical Principles. Then there could be changes to the Rules of Procedure.

- (b) Downtown Salisbury (B. Miller, ch.) Progress is ongoing. There are areas in the downtown that would now be required to be set back 35 feet for any redevelopment. Changing from B-6 zoning to B-5 zoning could increase the property owners’ options and would probably lead to further development in downtown. The committee is in the process of contacting affected property owners to get their input about the process. The committee is not yet ready to schedule a Courtesy Hearing, but hopes to be at that point by the next Planning Board meeting.

Committee assignments were distributed and there will be discussion after members have had an opportunity to review the list and new members have been instructed about their meaning.

FUTURE COMMITTEE MEETINGS

- (a) *Downtown Salisbury Committee – B-6 to B-5* – (Committee 2) will meet Friday at 8:00 at City Hall in the 1st floor conference room. (This has been working as a standing meeting)
- (b) *Stubouts and Cul-de-Sacs* (Legislative Committee B) is still an outstanding issue concerning the Cul-de-Sacs. It was decided to use the new committee structure beginning with the next Planning Board meeting. Dan Mikkelson added that there will be a City review this year of all of the construction standards and if the Board preferred they could defer the issue. Jeff Smith said the committee will discuss this and have a decision about it at the next meeting.

Harold Poole reviewed the actions of City Council as they pertain to the Planning Board.

Jeff Smith wants to go over the procedures at the next meeting and make sure members are in understanding about how things will go for the new year.

OTHER BUSINESS

The next Planning Board meeting will be April 27, 2004.

There being no further business to come before the Board, the meeting was adjourned.

Co-Chairman

Co-Chairman

Secretary